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Attorneys for Church Defendants and Donald C. Fossum

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

THOMAS A. WAITE,

Plaintiff,

vs.

THE CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation; THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Utah corporation; DONALD C. FOSSUM; and STEVEN D. BRODHEAD,

Defendants.

Case No.: CV-05-399-EFS

CHURCH DEFENDANTS AND FOSSUM'S LR 56 STATEMENT OF FACTS

The Corporation of the Presiding Bishop and Corporation of the President of the Church of Jesus Christ of Latter-day Saints (Church defendants) and Donald Fossum by and through their attorneys, Witherspoon, Kelley, Davenport & Toole, P.S., hereby submit the following LR 56.1 Statement of Material Facts in Support of its Motion for Summary Judgment of Dismissal.

STATEMENT OF FACTS

A. BROADHEAD'S CONDUCT.

1. On August 21, 2003, Steven Brodhead drove his Honda through a 4-

**DEFENDANT CHURCH AND FOSSUM LR 56
STATEMENT OF FACTS - 1**

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**WITHERSPOON, KELLEY, DAVENPORT & TOOLE
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS & COUNSELORS**

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1 way stop sign intersection at Eighth and Adams and collided with the side of an
 2 LDS Church-owned truck driven by Donald Fossum. Affidavit of Ross White,
 3 Exh. A. (Brodhead Depo., 40:4-16; 42:2-21.)

4 2. Prior to the accident, Brodhead had been diagnosed with depression,
 5 and prescribed Zoloft. White Aff., Exh. B. (Brodhead Depo., 6:14-24.)

6 3. On the day of the accident Brodhead had failed to take his
 7 prescription anti-depressant medication. White Aff., Exh. C. (Brodhead Depo.,
 8 5:20-6:2.)

9 4. At the time of this accident, Brodhead was angry and driving in an
 10 agitated manner. White Aff., Exh. D. (Brodhead Depo., 20:6-21:10.) White Aff.,
 11 Exh. E. (Statement of Defendant on Plea of Guilty ¶ 11.)

12 5. Just prior to the accident, Brodhead was involved in a verbal
 13 altercation with another driver. White Aff., Exh. F. (Brodhead Depo., 20:6 -
 14 21:10.)

15 6. Following his verbal altercation with another driver, Brodhead
 16 accelerated his vehicle to speeds in excess of 70 miles per hour on a residential
 17 street. White Aff., Exh. G. (Brodhead Depo., 23:14-20, 55:10 - 23.)

18 7. While traveling at or near 70 mph Brodhead saw a stop sign at the
 19 next intersecting arterial. He slammed on his brakes and slid into the side of the
 20 Church truck driven by Donald Fossum. White Aff., Exh. H. (Brodhead Depo.,
 21 55:10-56:7.)

22 8. At the time of the accident, Brodhead's brakes were deficient. White
 23 Aff., Exh. I. (Hunter Depo., 20:20-21:5.)

24 9. Had Brodhead's brakes been in proper working order he could have
 25 avoided the accident because he would have stopped about 60 feet short of the
 26 collision. White Aff., Exh. J. (Hunter Depo., 7:15-8:6.)

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 28 DEFENDANT CHURCH AND FOSSUM LR 56
 STATEMENT OF FACTS - 2

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1 10. On March 15, 2004, Brodhead pled guilty to charges of 3rd degree
 2 attempted assault and reckless driving. He paid a \$760 fine, had his license
 3 suspended for 30 days, spent three days in jail and spent two years on probation.
 4 White Aff., Exh. K. (Brodhead Depo., 39:4 - 39:25) White Aff., Exh. L.
 5 (Statement of Defendant on Plea of Guilty.)

6 **B. FOSSUM'S CONDUCT.**

7 11. Donald Fossum came to the four-way-stop intersection at Adams and
 8 Eighth and brought his truck to a complete stop. White Aff., Exh. M. (Fossum
 9 Depo., 57:9-18.)

10 12. Mr. Fossum was the favored driver when he stopped at the 4-way
 11 stop intersection. White Aff., Exh. N. (Hunter Depo., 3:18-20.)

12 13. After coming to a complete stop, there is no specific time that Fossum
 13 had to wait and/or look around before proceeding. White Aff., Exh. O. (Hunter
 14 Depo., 21:14-22.)

15 14. As the favored driver, Fossum could expect Brodhead (or any driver)
 16 to reduce speed, yield and allow Fossum to cross the intersection. White Aff.,
 17 Exh. P. (Hunter Depo., 4:6-16.)

18 15. Fossum did not have to assume Brodhead was going twice the speed
 19 limit and had bad brakes. White Aff., Exh. Q. (Hunter Depo., 6:4-7.)

20 16. If Fossum did not see Brodhead he would have no notice that
 21 Brodhead was violating the law, and if Fossum had no opportunity to detect or
 22 identify the potential hazard, he could not react to it. White Aff., Exh. R. (Hunter
 23 Depo., 5:24-6:3.)

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 28 DEFENDANT CHURCH AND FOSSUM LR 56
 STATEMENT OF FACTS - 3

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1 **C. ADMISSION OF NEGLIGENCE.**

2 17. Either by stipulation or by motion Defendant Brodhead will be
 3 amending his answer in this case to admit negligence and that his negligence
 4 caused injuries. White Aff., Exh. S. (Letter from Andrew Smythe, Counsel for
 5 Brodhead, to all counsel 04/24/2007.)

6 DATED this 25th day of May, 2007.

7 **WITHERSPOON, KELLEY, DAVENPORT
& TOOLE**

8 By: 

9
10 Brian T. Rekofke, WSBA No. 13260
11 Ross P. White, WSBA No. 12136
12 Attorneys for Church Defendants and
 Donald C. Fossum

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14 DEFENDANT CHURCH AND FOSSUM LR 56

15 STATEMENT OF FACTS - 4

16 G:\C\Church of Jesus Christ 14061\Waite 3\Pleadings\MSJ re Causation\LR 56 Statement of Facts 052307.wpd

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of May, 2007:

1. I electronically filed the foregoing **DEFENDANT CHURCH AND FOSSUM'S LR 56 STATEMENT OF FACTS** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

(for Waite) Richard C. Eymann and Stephen L. Nordstrom;

(for Brodhead) Andrew C. Smythe

2. I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants at the address listed below: **None**.
3. I hereby certify that I have hand delivered the document to the following participants at the addresses listed below: **None**.

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**DEFENDANT CHURCH AND FOSSUM LR 56
STATEMENT OF FACTS - 5**